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Koehn Painting Company and International Brotherhood of Painters and Allied Trades Local Union 76. Cases 17–CA–19923, 17–CA–19998

January 31, 2001

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN
AND HURTGEN

On April 28, 2000, the National Labor Relations Board issued a Decision and Order,¹ *inter alia*, ordering Koehn Painting Company to make employee Michael Ramsey whole for loss of earnings and other benefits resulting from the discriminatory actions taken against him in violation of the National Labor Relations Act. On July 17, 2000, the United States Court of Appeals for the Tenth Circuit entered a judgment enforcing in full the Board's Order.²

A controversy having arisen over the amount of backpay due to Ramsey, on November 16, 2000, the Regional Director for Region 17 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

On December 27, 2000, the General Counsel filed with the Board a motion for summary judgment, with exhibits attached. On December 29, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

¹ 330 NLRB No. 192 (not reported in Board volumes).

² Case No. 00-9519.

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the motion for summary judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's motion for summary judgment. Accordingly, we conclude that the net backpay due the discriminatee is as stated in the compliance specification and we will order payment by the Respondent of said amount to the discriminatee, plus interest accrued on said amount to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Koehn Painting Company, Newton, Kansas, its officers, agents, successors, and assigns, shall make whole the individual named below, by paying him the amount following his name, plus interest and minus tax withholdings required by Federal and State laws:³

Michael Ramsey \$11,162.00

Dated, Washington, D.C. January 31, 2001

John C. Truesdale, Chairman

Wilma B. Liebman, Member

Peter J. Hurtgen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

³ The General Counsel's compliance specification requests that the Board order the Respondent to "reimburse Ramsey for any extra Federal and/or State income taxes that would or may result from the lump sum payment of this backpay award." Because the General Counsel's proposed Order would involve a change in Board law, we believe that the question should be resolved after a full briefing by affected parties. See *Kloepfers Floor Covering, Inc.*, 330 NLRB No. 126, fn. 1 (2000). Because there has been no such briefing in this no-answer case, we decline to include this additional relief in this Order.